



California Fair Political Practices Commission

July 27, 1989

Ann Parode
General Counsel
San Diego Trust and Savings Bank
P.O. Box 1871
San Diego, CA 92112-4155

Re: Your Request For Informal
Assistance
Our File No. I-89-407

Dear Ms. Parode:

You have requested assistance under the campaign provisions of the Political Reform Act.^{1/} Because your request is a general inquiry, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTION

You have asked for clarification of the regulations concerning aggregation of contributions made by "affiliated entities" for purposes of the contribution limitations and campaign disclosure.

DISCUSSION

On June 6, 1989, the Commission amended Regulation 18428 and adopted new Regulation 18531.5. (Copies of the regulations are enclosed.) Regulation 18428 provides a definition of "affiliated

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2/ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

entities" for purposes of both the contribution limitations and the reporting requirements. Regulation 18531.5 describes the circumstances under which affiliated entities are required to aggregate their contributions for purposes of both the limitations and reporting. All of the provisions for aggregation of contributions for purposes of both the contribution limitations and the reporting provisions are contained in these two regulations.^{2/}

Regulation 18531.5 provides that two or more entities whose contributions are directed and controlled by "the same person or a majority of the same persons" are a single "person," "political committee" or "broad based political committee" for purposes of the contributions limitations.

Please note that "person" is defined as:

... an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization.

(Section 85102(b).)

Therefore, an individual who makes contributions and a corporation whose contributions are directed and controlled by the individual would be a single contributor (i.e., a single "person") for purposes of the contribution limitations and the campaign disclosure provisions.^{3/}

2/ The standards previously established for aggregation of contributions between an individual and a closely held corporation (In re Lumsdon (1976) 2 FPPC 140) and between a parent corporation and its subsidiaries (In re Kahn (1976) 2 FPPC 151) have been replaced by the standards established in Regulations 18428 and 18531.5. Prior to the adoption of Regulation 18531.5 and the amendment to Regulation 18428, the Commission staff was recommending that the standards previously established in the Lumsdon and Kahn opinions be used for guidance in determining when contributions should be aggregated among affiliated entities.

3/ Enclosed for your information is the Leidigh Advice Letter (No. A-89-391), which provides that the contribution limitation which applies to contributions made by affiliated entities which consist of different types of contributors (e.g., a "person" and a "political committee"), is the higher of the two limitations.

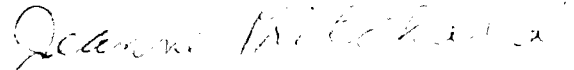
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Regarding the phrase "direct and control" as used in Regulations 18428 and 18531.5, the Commission has not issued formal advice defining the phrase. However, as general guidance, we believe that a person "directs and controls" an entity's contributions if he or she has decisionmaking authority over whether the contributions will be made and in fact exercises that authority. We have given telephone advice that an attorney who reviews a corporation's contributions only for legality is not "directing and controlling" those contributions.

I hope this discussion is helpful. If you have additional questions, or specific facts you would like us to address, please contact me.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeanne Pritchard
Division Chief
Technical Assistance and
Analysis Division

Enclosures



California Fair Political Practices Commission

July 12, 1989

Ann Parode
General Counsel
San Diego Trust & Savings Bank
P.O. Box 1871
San Diego, CA 92112-4155

Re: Letter No. 89-407

Dear Ms. Parode:

Your letter requesting advice under the Political Reform Act was received on July 7, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh

San Diego Trust & Savings Bank
San Diego, California

FPPC

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EXECUTIVE OFFICES

July 3, 1989

Ms. Jeanne Pritchard
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Ms. Pritchard:

Thank you for your continuing assistance in facilitating my client's understanding of the impact of Proposition 73 on the political contribution activities of itself, its affiliate and its officers. The regulations which you forwarded to me by FAX on June 8, 1989 are informative in providing guidance as to the aggregation rules for parent-subidiaries and affiliated entities under the same controlling owner. They leave me, however, somewhat confused in the following particulars:

1. In previous conversations with FPPC staff, I was cited the so-called Lumsdon opinion for the proposition that contributions by a majority shareholder and a controlled corporation would be aggregated for purposes of both campaign contribution limitations and committee reporting purposes. Although the proposed FPPC regulations deal with control resulting in the aggregation of contributions by two or more controlled entities, I do not see that the Lumsdon opinion has been formalized in the regulations insofar as aggregation is required between a controlling shareholder and his controlled corporation. Am I incorrect in this conclusion or are there plans by the FPPC to formalize the Lumsdon opinion in respect to the mandate of Proposition 73?
2. By analogy, you had indicated in our conversation of May 17, 1989 that a rule would be adopted requiring the aggregation of contributions made by either an individual or a group of individuals who direct or control the contribution activities of a corporate entity; such persons' own contributions would be aggregated with the contributions of the controlled corporation for purposes of contribution limits and committee reporting. Again, I see nothing in the proposed regulations which you sent me earlier this month which formalize that advice on your part.
3. Last week I received an FPPC circular containing inter alia, Reg. §§ 18428 and 18531.5 which apply the concept of "control" also. Is there a definition of this term? Since

Ms. Jeanne Pritchard
July 3, 1989
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the regulations are hitting my desk on a rather piecemeal basis, it may be that the FPPC has defined "control" elsewhere but I have not yet read it.

These concerns are raised because of the lack of similarity between Government Code §§ 82047 and 85102(b). The former definition of "person" contemplates the concept of a group of persons "acting in concert," and is presumably what the Lumsdon and Kahn opinions sprang from. By contrast, however, §85102(b) as adopted by Proposition 73, contains no similar "concerted activity" concept. Not being a full-time practitioner of political campaign law, I am not comfortable in resolving this ambiguity unassisted, particularly after FPPC staff has indicated to me an intention to apply pre-Proposition 73 FPPC opinions to post-Proposition 73 statutes.

At your earliest convenience, I would appreciate a telephone call with at least a preliminary sense of the answer to these questions. Ultimately, your guidance on how to obtain formal guidance by way of opinion or otherwise would be appreciated. Thank you for your anticipated prompt response.

Very truly yours,



ANN PARODE
General Counsel

AP:map

cc: D. Herde
D. Drake

San Diego Trust & Savings Bank
San Diego, California

FPPC

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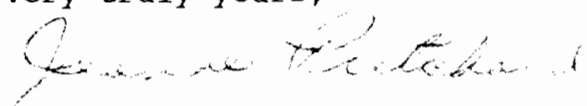
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